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<sup>1</sup> date when the request for an advisory opinion or application was filed with the court Registry

[5] Permanent Court of International Justice

<i>Present:</i>	Mm. Huber,	<i>President,</i>
	Loder,	<i>Former President,</i>
	Weiss,	<i>Vice-President,</i>
Lord	Finlay,	<i>Judges,</i>
Mm.	Altamira,	
	Oda,	
	Anzilotti,	
	Yovanovitch,	<i>Deputy-Judges.</i>
	Beichmann,	
	Negulesco,	
	Wang.	

I.

On March 13th, 1925, the Council of the League of Nations adopted the following Resolution:

"The Council of the League of Nations has received, in accordance with the terms of Article 39 of the Treaty of Paris between Poland and the Free City of Danzig, signed November 9th, 1920, an appeal by Poland against a decision given under the said article by the High Commissioner of the League of Nations on February 2nd, 1925.

"The said decision, the terms of which are communicated to the Court, deals with the following dispute between Poland and the Free City of Danzig. [7]

"Under the terms of Article 104, paragraph 4, of the Treaty of Versailles, signed June 28th, 1919, Articles 29 to 32 (inclusive) of the Treaty of Paris between Poland and the Free City of Danzig, signed November 9th, 1920, and Articles 149 to 168 (inclusive) and Article 240 of the Agreement of Warsaw between Poland and the Free City of Danzig, signed October 24th, 1921, Poland is entitled "to establish in the Port of Danzig a post, telegraph and telephone service communicating directly with Poland" (Article 29 of the Treaty of Paris).

"For the purpose of the above service Poland possesses postal premises in the

Heveliusplatz at Danzig.

"On January 5th, 1925, in exercise of rights which she claims to derive from the above-mentioned international agreements, Poland set up letter-boxes at various points outside the Heveliusplatz premises. These boxes were intended to receive postal matter to be sent to Poland via the Polish postal service. The matter thus posted was to be collected and brought to the Heveliusplatz premises by postmen belonging to that service. Poland also claimed to be entitled to deliver outside the Heveliusplatz premises postal matter brought from Poland by the Polish postal service. The Free City of Danzig thereupon asked the High Commissioner to give a decision, in virtue of Article 39 of the Treaty of Paris, to the effect that the rights thus claimed by Poland were excluded by a decision or decisions given by the High Commissioner's predecessor in office, General Haking, which the Free City considered to preclude the Polish service from collecting or delivering postal matter outside the Heveliusplatz premises and to confine the use of the service to Polish authorities and officials and exclude its use by the public.

"The present High Commissioner's decision of February 2nd, 1925, declares (paragraph 6) that the dispute, "stripped of all its technicalities, is whether the working area of the Polish postal service extends beyond the buildings allotted to that service". [8]

"The High Commissioner has examined this question in the light of certain decisions, or pronouncements, of his predecessor, General Haking.

"The High Commissioner considers that the questions now at issue between Poland and the Free City of Danzig are decided finally by a decision given by General Haking on May 25th, 1922, which in his opinion should be regarded as having been authoritatively interpreted and shown to be applicable by a decision given by General Haking on December 23rd, 1922, and a letter addressed by General Haking on January 6th, 1923, to the Commissioner-General of the Polish Republic at Danzig. He has accordingly (paragraph 18 of the decision of February 2nd, 1925) re-affirmed, in language intended to make explicit its application to the present dispute, the decision which he considers General Haking to have given.

"The Council has the honour to request the Permanent Court of International Justice, in conformity with Article 14 of the Covenant, to give an advisory opinion

upon the following questions:

"(1) Is there in force a decision of General Haking which decides in the manner stated in paragraph 18 of the present High Commissioner's decision of February 2nd, 1925, or otherwise the points at issue regarding the Polish postal service, and, if so, does such decision prevent reconsideration by the High Commissioner or the Council of all or any of the points in question?

"(2) If the questions set out at (a) and (b) below have not been finally decided by General Haking:

"(a) Is the Polish postal service at the Port of Danzig restricted to operations which can be performed entirely within its premises in the Heveliusplatz, or is it entitled to set up letter-boxes and collect and deliver postal matter outside those premises?

"(b) Is the use of the said service confined to Polish authorities and officials, or can it be used by the public? [9]

"The Secretary-General is authorized to submit this application to the Court, together with all the documents relating to the question; to explain to the Court the action the Council has taken in the matter; to give all the necessary assistance for the examination of the case, and, if necessary, to take steps to be represented before the Court."

In pursuance of this Resolution, the Secretary-General of the League of Nations, on March 14th, 1925, submitted to the Court a Request for an Advisory Opinion in the following terms:

"The Secretary-General of the League of Nations,

"in pursuance of the Council Resolution of March 13th, 1925, and in virtue of the authorization given by the Council,

"has the honour to submit to the Permanent Court of International Justice an Application requesting the Court, in accordance with Article 14 of the Covenant, to give an advisory opinion to the Council on the questions which are referred to the

Court by the Resolution of March 13th, 1925 (see attached text).

"The Secretary-General will be prepared to furnish any assistance which the Court may require in the examination of this matter, and will, if necessary, arrange to be represented before the Court."

In conformity with Article 73 of the Rules of Court, the Request was communicated by the Registry to the Members of the League of Nations, through the Secretary-General of the League, and to the States mentioned in the Annex to the Covenant. It was also communicated to the Senate of the Free City of Danzig as being likely to be able to furnish information on the questions before the Court.

The Council of the League of Nations having requested the Court to deal with these questions at an extraordinary session, in order to enable the Council to consider the Court's opinion at its own session in June, the President of the Court decided, by virtue of the powers conferred upon him by Article 23 of the Court's Statute, to summon an extraordinary session of the Court beginning on April 14th, 1925.

The Court asked the Parties immediately concerned, namely the Polish Government and the Senate of the Free City of Danzig, to [10] inform it whether they desired to furnish information either verbally or in writing, whereupon the representatives of these Parties each filed with the Registry on April 10th — the date prescribed — a Memorandum with annexes.

On the other hand, the Court, not having on April 15th, the time-limit fixed, received any request to the effect that it should hold a public hearing for the submission of oral statements by the interested Parties in regard to the whole question before it, decided that there should be no hearing for this purpose. Permission was, however, given for each of the interested Parties to file a second written document. Availing themselves of this permission, they each filed with the Registry on April 17th, the date fixed, a note with annexed documents. Subsequently, replies to these notes were submitted with the consent of the Court; on May 4th the Court was thus in possession of all the documents in the case.

In addition to the documents submitted by the interested Parties, the Court has had before it a dossier, with additional documents<sup>1</sup> sent by the Secretary-General of the League of Nations and also certain further documents and information which the Secretary-General was good enough to furnish at the request of the Court.

## I.

Before giving the opinion for which it has been asked on the questions formulated by the Council, the Court must in the first place trace the origin of the divergence of views which has led to this request for an opinion.

The Peace Treaty signed at Versailles on June 28th, 1919 (Articles 100 to 108) constituted the City of Danzig with its territory as a Free City under the protection of the League of Nations, and placed its constitution under the League's guarantee. A High Commissioner of the League of Nations, residing at Danzig, was entrusted with the duty of dealing in the first instance with all differences arising between Poland and the Free City, in regard to the Treaty of Versailles itself or any arrangements or agreements made thereunder. [11]

General Sir R. Halting was appointed High Commissioner by a Resolution of the Council dated December 17th, 1920. His appointment, which was renewed in the meantime, finally expired on February 3rd, 1923. On February 1st, 1923, the Council appointed Mr. M. S. MacDonnell to succeed him.

Amongst the supplementary "arrangements and agreements" above referred to, the Treaty of Versailles provides that a convention should be concluded between the Polish Government and the Free City with the object, amongst others, of ensuring to Poland "the control and administration of postal, telegraphic and telephonic communication between Poland and the Port of Danzig".

According to the reply dated June 16th, 1919, made by the Allied and Associated Powers to the observations of the German delegation on the conditions of peace (which reply was moreover cited in the report made by the Japanese representative on November 17th, 1920, to the Council of the League of Nations), this provision was one of those designed to assure to Poland free access to the sea at the port of Danzig, its only outlet on the Baltic.

The Convention in question was signed at Paris on November 9th, 1920. Chapter IV of the Convention, containing Articles 29-32, deals with the rights accruing to Poland in the port of Danzig as regards postal arrangements.

Furthermore, Article 39 of the Convention lays down the procedure for the settlement of possible differences between Poland and the Free City outlined by the Treaty of Versailles.

By an agreement concluded between the Parties on June 20th, 1921, and confirmed by the Council on the following day, the time allowed for appeal was fixed at forty days from the notification of the decision.

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<sup>1</sup> See list in the Annex, page 42.

The Convention provided for the subsequent conclusion between the contracting Parties of a further agreement. This agreement, which was designed to complete the said Convention and to settle the details of its execution, was signed at Warsaw on October 24th, 1921; it contains a Section III devoted to postal matters and comprising twenty articles (149-168).

Articles 168, 1), and 240 *d-f* of the Agreement show that a number of outstanding questions regarding postal matters were expressly reserved for future settlement either by mutual arrangement or by means of decisions given in accordance with the terms of Article 39 of the Convention of Paris. [12/3]

The Polish Government has stated without contradiction that the Agreement came into force on January nth, 1922, in virtue of an exchange of Notes dated December 31st, 1921. Similarly, in his report to the Council of the League of Nations dated January 12th, 1922, the Japanese representative states that he understands "that the Agreement was ratified on that date".

Pending the conclusion of the Convention and Agreement referred to above, postal relations between Poland and the Free City had been regulated by certain articles of a provisional arrangement dated April 22nd, 1920.

As regards Section III of the Warsaw Agreement, this was prepared by means of negotiations between the Polish and Danzig postal Administrations which appear to have extended from April to August 1921.

On the 15th of the latter month the High Commissioner gave his decision in a dispute between Poland and the Free City regarding the ownership, etc., of the railways situated in the territory of the latter. For the purposes of his decision the High Commissioner accepted a red line traced by the Harbour Board on a map of the City of Danzig for the purpose of indicating that amongst the railways, sites and establishments marked within this line were to be found those "especially serving the port". By their Agreement of September 23rd, 1921, the representatives of the Parties expressly renounced their right to appeal against this decision, which has been a subject of discussion between the interested Parties; for Poland regards it as furnishing a geographical definition — the only one in existence — of the area of the "port of Danzig".

As has already been stated, Article 240 of the Warsaw Agreement reserved a certain number of outstanding questions for decision by the High Commissioner. In February 1922, Poland approached the High Commissioner with a view to obtaining his decision upon some of the points left outstanding with regard to the postal regime. The Polish request, refers to

paragraphs (d) and (f) of Article 240 of the Warsaw Agreement for the purpose of defining the questions, a settlement of which was desired. In its reply to this request, the Free City alludes to paragraph (e) of this article in addition to the paragraphs above mentioned. The three following questions were therefore submitted to the High Commissioner and were argued before him: [13]

- (1) the meaning of the expression "direct communications";
- (2) the extension of the Polish service beyond the port of Danzig;
- (3) whether Poland had a right to obtain land and buildings outside the port.

As regards the last point, Poland had, in a letter dated December 19th, 1921, asked the International Allocation Commission to allot to her for her postal service certain buildings amongst which was the military hospital in the Heveliusplatz. By a decree dated March 9th, 1922, the Commission allocated to Poland, amongst others, the building in the Heveliusplatz.

On March 8th the High Commissioner wrote to the two Parties suggesting that they should come to an agreement regarding the points submitted to him for decision. In his letter he stated that, in his opinion, Poland was entitled to obtain such buildings throughout the whole territory of the Free City as she could show to be necessary for the conduct of the postal service granted her.

As no agreement was reached, the High Commissioner on May 25th, 1922, gave a decision in regard to the points submitted to him. The operative portion of this decision runs as follows:

(1) That Danzig must provide Poland with the means of establishing a postal, telegraph and telephone service in the vicinity of the Port of Danzig, if possible in one building, but in any case in one or more adjacent buildings.

(2) That Poland has the right of purchasing or hiring from the Government of Danzig, on equitable terms and anywhere on the territory of the Free City, the necessary land or buildings for the establishment of this service, and for its efficient and convenient communication across Danzig territory to any place in Poland selected by her, or to any places agreed upon between the two Governments of Poland and Danzig, but that when making demands under this right Poland is required to show that the purchase or hire of such land or buildings is "necessary" in accordance with Article 30 of the Convention of November 9th, 1920. [14]

(3) That communication by this postal, telegraphic and telephonic service

must go direct by any route selected by Poland or any routes agreed upon between the two Governments of Poland and Danzig under Article 150 of the Convention of October 24th, 1921, from the one place selected in Danzig territory to the one place or places selected in Polish territory, and that no postal, telegraphic or telephonic material or messages can be received or delivered on this route, or these routes, except in the establishment described in (1) above.

(4) That Poland can establish this communication under the conditions mentioned in (3), in any manner she chooses, rail, air, road or water, and can change the route selected provided she does not use two or more alternative routes at the same time, except by agreement as in sub-paragraph (3) above.

(5) Any further disagreement between the two Governments arising out of sub-paragraph (2) above as regards the word "necessary" can be dealt with by either Government under Article 39 of the Convention of November 9th, 1920.

Poland appealed against this decision on August 11th, 1922. The appeal, however, was withdrawn following an agreement between the Parties as to the interpretation given on August 30th, 1922, by the High Commissioner of his decision of May 25th. This interpretation was as follows:

"The High Commissioner, having been invited by the representatives of Danzig and Poland to explain certain points of his decision of May 25th, 1922, concerning the establishment of a Polish post, telegraph and telephone service at Danzig, states that paragraph 1 of this decision deals with the *installation* of the postal service, which is to occupy a single site (Heveliusplatz). If Poland considers this site too small, it shall be incumbent upon Danzig to supply additional premises in the immediate neighbourhood, that is to say on the opposite side of the street or by adding on to the existing building.

"Paragraph 2 deals with the *development* of the postal service and gives Poland the right to negotiate the purchase or hire of [15] any other site within the territory of the Free City. The question of a second building therefore falls under paragraph 2. Danzig rejects the idea of a second building; consequently the question falls under paragraph 5. Poland can adduce very cogent arguments in favour of the necessity for the two buildings, which have already been allotted to her for the postal service by the Allocation Commission of the Principal Allied Powers. This fact will

certainly influence the High Commissioner's decision, should the question be referred to him."

While the request which ultimately gave rise to the decision of May 25th, 1922, was still under consideration by the High Commissioner, a discussion began between the Parties regarding the scope of Article 168 of the Warsaw Agreement. The discussion, which was at first conducted verbally, was carried on by correspondence after May 23rd, the date on which the Polish postal Administration sent to the Danzig Administration a memorandum on the points in dispute (this memorandum, however, has not been communicated to the Court). From Danzig's reply, dated June 2nd, 1922, it appears that the rights which Poland claimed under the article in question were in a large measure disputed by the Free City.

On October 6th, the Polish Administration requested the Danzig Administration to reconsider its opinion of June 2nd, in the light of the decision of May 25th as interpreted on August 30th. On November 21st, Danzig replied that the decision in question had not affected the situation and that negotiations might profitably be continued on the basis of the notes of May 23rd and June 2nd.

This view was not accepted by Poland. The Polish Administration, in a note dated December 9th, 1922, argued that, in its opinion, it was to be deduced from the decision of May 25th as interpreted on August 30th that the sphere of activity of the Polish service should be not merely the "port" in the sense in which the term is used in the decision, but the whole city of Danzig regarded as an administrative unit.

Such was the situation when the High Commissioner, on December 23rd, 1922, delivered a decision denying Poland the right to have a letter-sorting office at the main railway station in Danzig. [16]

With reference to this decision, the Danzig Administration replied on December 29th, 1922, that they were perfectly prepared to continue negotiations on the subject of Article 168, but that, for the purposes of these negotiations, regard must also be had to the decision of December 23rd. The Polish Administration on January 10th, 1923, expressed the contrary opinion.

The Senate of the Free City had already on January 4th, 1923, made application to the High Commissioner for a decision upon Poland's claims concerning the sphere of activity of the Polish postal service, as set forth in the note of December 9th, 1922, claims which the Senate regarded as unjustified.

The High Commissioner, on January 6th, 1923, transmitted to the Polish Commissioner-General in Danzig the Senate's application of January 4th under cover of a letter in which he said that, in his view, no decision was necessary, since the decision already given made it quite clear that Poland had no right to establish a postal service extending in any respect outside the premises allotted to it.

In reply to this letter the High Commissioner was informed on January 20th, 1923, by Poland that she considered Danzig's application to be premature, since negotiations between the Parties had hardly been begun. And in a letter dated March 2nd, 1923, the Polish postal Administration proposed to the postal Administration of Danzig that they should in the first place settle the limits of the area of operation of the office at Heveliusplatz, a proposition which, however, the latter Administration, in a letter of March 20th, declined to accept, not considering itself competent to deal with it under Article 168 of the Warsaw Agreement. No further steps seem to have been taken to settle the question before December 1st, 1924.

The High Commissioner's decision of December 23rd, 1922, above referred to, followed an exchange of views between Poland and Danzig which took place concurrently with the discussion above described regarding Article 168 of the Warsaw Agreement.

The exchange of views above mentioned related to the question whether Poland was entitled to establish at the Danzig main railway station not only a transshipment office but also a sorting office. As direct discussion of the matter between the Parties led to no result, the High Commissioner appears to have invited them to hold a conference under his auspices. Following this conference, which took [17] place on October 23rd, 1922, the Senate of Danzig received on November 20th a statement of the Polish standpoint which was alleged to be compatible with the High Commissioner's decision of May 25th, 1922. Danzig in her reply — dated December 12th, 1922 — to this note regards the Polish claim for a sorting office as indicative of a desire to make it possible for the public to despatch letters from the Polish office at the station; that is to say, to extend the sphere of operation of the Polish postal service. This aspect of the debates leading up to the decision of December 23rd, 1922, connects them with the discussion regarding Article 168 of the Warsaw Agreement.

The Court is not in possession of any documents by which the Parties may have expressly sought the High Commissioner's decision on the point at issue, that is to say, the decision of December 23rd, 1922.

In the statement of reasons for the decision are included certain considerations to the effect that the installation of a sorting office would constitute an extension of the Polish

postal service and that such an extension is not admissible because "it might cause serious loss to the postal service of Danzig and thence to the State"; it is also said that the office granted to the Polish service, namely that at Heveliusplatz, was intended for the despatch of mails by the Polish authorities in Danzig and oversea mails in transit.

Poland appealed against this decision on March 20th, 1923. No decision was however taken in regard to this appeal as an agreement was concluded between the Parties on April 18th, 1923, and confirmed on the following day by the Council of the League of Nations.

This agreement sanctions the establishment of a Polish sorting office at the main railway station, subject to certain restrictions, one of which is that the office should remain closed to the public. This agreement states in terms that it replaces the decision of December 23rd, 1922, but expressly lays down that "this practical settlement of the question shall in no way affect the position in law". Many documents have been placed before the Court to assist it in forming an opinion as to the meaning to be attached to this passage: the Parties to the agreement maintain different views on the point.

For reasons which are interpreted differently by the two Parties, the Heveliusplatz building, which was allotted to Poland on [18] March 9th, 1922, had not yet been occupied by the Polish postal service two years later. On April 1st, 1924, however, an agreement regarding its evacuation was concluded, and it appears that it had actually been evacuated by July 1st, 1924. The Court does not possess full information as to the manner in which the Polish post at Danzig was organized in the meantime and after the substitution, on January 11th, 1922, of the Warsaw Agreement of October 24th, 1921, for the provisional Agreement of April 22nd, 1920.

On December 1st, 1924, the President of the Senate of the Free City sent to the Polish Commissioner-General in Danzig a fresh note dealing with, i. a., Article 168 of the Warsaw Agreement.

This note stated that the Free City was informed that Poland intended to set its postal service in operation and to extend the activities of that service beyond the sphere to which, according to the opinion of Danzig, it was to be restricted. The Free City therefore asked to be informed whether Poland's intention was to establish a *fait accompli*, without previously having recourse to the arbitration procedure provided for in the treaties. Danzig claimed that its point of view regarding the restriction of the Polish service was supported amongst other things by a certain passage taken from the statement of reasons given by the High

Commissioner in his decision of December 23rd, 1922, and by the High Commissioner's letter of January 6th, 1923. Lastly, in his note of December 1st, 1924, the President of the Senate stated the opinion of the Free City regarding the nature of Article 168 of the Warsaw Agreement; Danzig took the view that it was not a question of a series of agreements already, in principle, concluded and only the precise terms of which remained to be drafted, but rather of a list of points not falling within the framework of reciprocal rights recognized by the treaties, and in regard to which the Parties were free to contract obligations or not, at their discretion. Danzig for her part was prepared either to open negotiations in regard to the general principle underlying the article or to accept an arbitral decision on that question.

The Polish Commissioner General's reply was dated January 3rd, 1925. It was to the effect that Poland, having now been enabled to occupy the building at Heveliusplatz, intended to put its postal service in operation and that this service would include letter boxes and postmen. The sphere of action of this service would be the "port of Danzig" in the territorial sense of that expression, which would be regarded for the present purpose as bounded by the [19] red line mentioned by the High Commissioner in his decision of August 15th, 1921. As regards the decision of December 23rd, 1922, Poland considered it as non-existent, having been replaced by the Agreement of April 18th, 1923. Lastly, in Poland's view, Article 168 of the Warsaw Agreement contained solutions which were binding on the Parties.

On January 5th the Polish postal service proceeded to set up in the streets of Danzig a number of letter-boxes bearing Polish inscriptions. The various diplomatic and other incidents which may have followed this step are outside the scope of the Court's jurisdiction.

On the following day, January 6th (sometimes the date January 7th is given), the Senate of the Free City submitted to the High Commissioner a reasoned application for a decision to the following effect: (1) that, by decisions having the force of *res judicata*, the Polish postal service was strictly confined to the one office at Heveliusplatz and, in particular, did not extend to the employment of letter-boxes and postmen outside this office; (2) that this service was restricted to the transport of the mails of the Polish, authorities in the territory of Danzig to or from this office; (3) that the *status quo ante* January 5th, 1925, should be restored.

In his reasoned opinion on the application made by Danzig on January 6th/7th, 1925, the Polish Commissioner-General requested the High Commissioner to give a decision to the following effect:

(1) that Poland was entitled to inaugurate at Heveliusplatz a complete postal service including

the use of letterboxes and postmen within the territorial sphere of action of that service;  
(2) that the extent of this sphere of action was as indicated on the plan annexed to the High Commissioner's decision of August 15th, 1921.

It should be observed that the High Commissioner thus found himself confronted with the question of the definition of the port of Danzig, and, should he adopt a territorial definition, also with that of the limits of the port from the standpoint of the postal service. It should also be noted that, for the first time, he was asked to give a decision regarding the interpretation of Articles 149-151 of the Warsaw Agreement.

The High Commissioner, on February 2nd, 1925, gave a decision which was in the main favourable to the contentions of Danzig.

The operative portion of the decision is as follows: [20/3]

(a) The post, telegraph and telephone service which the Polish Government has the right to establish under Articles 29 and 30 of the Treaty of Paris means one office in the Port of Danzig. This office is that allotted to the Polish Postal Administration in the Heveliusplatz.

(b) Communications by this service from the territory of the Free City to Poland and vice versa must go from the buildings mentioned in (a) to the one place or places selected in Polish territory, and no postal, telegraphic or telephonic messages or communications or matter can be received or delivered on this route except in the establishment mentioned in (a). By the words 'received' and 'delivered' is meant reception or delivery by whatever means employed and does not distinguish between German technical postal terms.

(c) The use of letter-boxes outside the limits of the building or buildings mentioned in (a) and of a collection and delivery service by means of postmen in any part of the territory of the Free City is inadmissible and contrary to the decision of May 25th, 1922.

(d) The office mentioned in (a) is not intended to deal with all letters posted anywhere in Danzig territory for Poland or abroad whether by Polish nationals or other inhabitants of the Free City, but is intended to enable the Polish authorities legally established in Danzig territory to make up mails and despatch them direct to Poland or abroad from that Post Office and nowhere else, and also to deal with through mails from Poland, via the Port of Danzig to countries beyond the sea and vice versa.

(e) Paragraphs (1) and (2) of the Agreement of April 18th, 1923, regarding the sorting office and the Agreement of August 29th, 1924, regarding the sorting office for overseas mails in the harbour remain undisturbed by these decisions.

The Polish Government appealed against this decision, asking for its annulment. [21]

This appeal, dated February 20th, 1925, is based, amongst other things, on the allegation that the decision in question proceeded on an erroneous construction of the decision of May 25th, 1922, and was inconsistent with the provisions of the Warsaw Agreement. It is also based on the fact that the decision of February 2nd did not fix the bounds of the port, as desired by the Polish Government, and on the assertion that it was impossible to carry out that decision in practice.

The opinion of the Senate of the Free City on this appeal is dated March 2nd, 1925. It was to the effect that the appeal should purely and simply be rejected.

A Polish Reply to this opinion, dated March 9th, 1925, was followed by a Rejoinder from Danzig dated March 12th.

On the following day, March 13th, 1925, the Council of the League of Nations, having before it the documents enumerated above concerning the appeal and a report by the Spanish representative, was called upon to give its decision upon the question referred to it by Poland's appeal. After hearing the statement of the Parties the Council, as a preliminary measure, adopted the Resolution reproduced in the introduction to this opinion.

## II.

The Council's Request for an advisory opinion contains two questions.

The first is whether there is in force a decision of General Haking which decides, in the manner stated in paragraph 18 of the present High Commissioner's decision of February 2nd, 1925, or otherwise, the points at issue regarding the Polish postal service, and, if so, whether such decision precludes reconsideration by the High Commissioner or the Council of all or any of the points in question. This is a preliminary question which relates to what is generally known as the doctrine of *res judicata*, and the second question arises only if the answer of the Court to the first is in the negative.

The second question is one on the merits. It contains two points: [22]

"(a) Is the Polish postal service at the port of Danzig restricted to operations which can be performed entirely within its premises in the Heveliusplatz, or is it entitled to set up letter-boxes and collect and deliver postal matter outside those premises?

"(b) Is the use of the said service confined to Polish authorities and officials, or can it be used by the public?"

The Court has to consider, at the outset, the scope of the first question. It should be observed that this question is couched in general terms, without any specific reference to points (a) and (b) of the second question.

In a letter to the High Commissioner, dated January 21st, 1925, Poland maintained that the Polish postal service extended over the territory delimited by the red line on the plan annexed to the decision of the High Commissioner of August 15th, 1921, and asked the High Commissioner to decide accordingly. The decision of February 2nd, 1925, was to the effect that the Polish postal operations were limited to the one building at Heveliusplatz assigned to her for the purpose, thus rendering a decision on the delimitation of the port unnecessary. One of the grounds of Poland's appeal (February 20th, 1925) against this decision was that the High Commissioner had failed to give a definition of the port, as requested by Poland. Danzig, in her reply to the Polish appeal, under date of March 2nd, 1925, contested Poland's claim in regard to the definition of the port from the point of view of the Polish postal service.

As regards the limits of the port, no question of *res judicata* arises. Though Poland contends that the port of Danzig should be delimited for postal purposes in accordance with the red line mentioned in the High Commissioner's decision of August 15th, 1921, she does not argue that the said decision, the definitive character of which is not disputed by either Government, has defined the limits of the port from the point of view of the Polish postal service as established under the Paris Convention. The fact that Poland envisages the possibility of an extension of the limits of the port for postal purposes beyond the red line is another proof that, in her opinion, that line has not been fixed by a definitive decision as to the boundary of the port. The Senate of Danzig on their side [23] categorically deny that the decision of August 15th, 1921, has any bearing on the postal service.

The Court entirely shares this view. That decision neither in its statement of reasons,

nor in its operative portion, has any bearing on postal relations, and this is quite natural because the clauses of Article 104 of the Versailles Treaty have been carried out according to very different systems as regards railways on the one hand, and postal, telegraph and telephone communications on the other. It is further to be observed that the red line has been drawn by the Harbour Board — and later on accepted by the High Commissioner — not for the purpose of delimiting an area within which the Board has general powers, but for the purpose of indicating the area within which the railway lines with certain exceptions are to be considered principally to serve the port. The fact that a railway principally serves the port does not imply that it is situated in an area which, as a whole, is to be considered as belonging to the port. The decision of August 15th, 1921, leaves therefore the question as to the territorial limits of the port of Danzig for postal purposes entirely open.

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The Court must now proceed to consider whether there is in force any decision by General Haking which disposes of the points (a) and (b) in question 2 in the manner stated in paragraph 18 of the present High Commissioner's decision of February 2nd, 1925, or in some other manner, and, if so, whether such decision prevents reconsideration by the High Commissioner or the Council of the League of Nations of all or any of the points at issue. The second part of this question need only be considered if the first part is answered in the affirmative.

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Article 103, paragraph 2, of the Treaty of Versailles provides that

"the High Commissioner will also be entrusted with the duty of dealing in the first instance with all differences arising [24] between Poland and the Free City of Danzig in regard to this Treaty or any arrangements or agreements made thereunder."

This provision was evidently intended to lay down a general principle to be developed and completed by subsequent rules. These rules are to be found in Article 39 of the Paris Convention of November 9th, 1920, which runs as follows:

"Any differences arising between Poland and the Free City of Danzig in regard to the present Treaty or to any other subsequent agreements, arrangements or conventions, or to any matter affecting the relations between Poland and the Free City, shall be submitted by one or the other Party to the decision of the High

Commissioner, who shall, if he deem it necessary, refer the matter to the Council of the League of Nations.

"The two Parties retain the right of appeal to the Council of the League of Nations."

The Court has no doubt that the principles laid down in its Opinions Nos. 8 and 9 as to the final character of decisions under international law, apply to any final decision under the aforesaid provisions.

This point is not contested by the Parties, although Poland maintains that there may be exceptional cases in which even a final decision can be reconsidered by the High Commissioner or the Council of the League of Nations.

The point now at issue is only whether there is in force a decision to the effect that the Polish postal service at the port of Danzig is restricted to operations within its premises at Heveliusplatz and that the use of such service is confined to Polish authorities and offices.

It appears from the documents submitted to the Court that both Parties mainly rely in their arguments upon three documents, viz., the decision of May 25th, 1922, the decision of December 23rd, 1922, and the High Commissioner's letter of January 6th, 1923.

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An appeal was brought by Poland before the Council of the League of Nations against the decision of General Haking of May 25th, 1922. On August 30th of the same year, in consequence of the interpretation given by the High Commissioner of certain points of his decision, the appeal was withdrawn. The decision so interpreted became therefore final and binding and is actually in force. It remains to be seen whether it covers the points now in dispute.

The decision was given in consequence of submissions made by the Parties under Article 240 of the Warsaw Agreement of October 24th, 1921, which reserved for the decision of the High Commissioner, *inter alia*, the following points relating to the Polish postal service:

[*Translation.*<sup>1</sup>]

"(d) The interpretation of the expression 'directly' (*directement — unmittelbar*)

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<sup>1</sup> Translation prepared by the Registry. The original German text is reproduced hereafter:

d) über die Auslegung des Begriffs „unmittelbar“, — „directement“ — „directly“ — in Artikel 29 der Konvention;

e) über die Frage, welchen Umfang die polnische Posteinrichtung ausserhalb des Hafens von Danzig annehmen darf (Artikel 29 der Konvention);

f) über die Frage, ob sich die Verpflichtung Danzigs zur Hergabe von Gebäuden und Gelände nur auf den Hafen erstreckt, Oder ob Polen

in Article 29 of the Convention.

"(e) The question of the extent to which the Polish postal service may operate outside the port of Danzig (Article 29 of the Convention).

"(f) The question whether Danzig's obligation to provide land and buildings extends only to the port, or whether Poland may also claim to obtain such land and buildings outside the port (Article 30 of the Convention)."

In February 1922, Poland submitted to the High Commissioner for his decision points (d) and (f), involving an interpretation of part of Articles 29 and 30 of the Paris Convention; in her reply of February 28th, Danzig added point (e), contending that the Polish installations outside the port should be confined to assuring the working of the postal, telegraph and telephone communications between Poland and the port of Danzig. It is obvious that none of the questions thus submitted to the High Commissioner refer to the points now in dispute; and it is not to be assumed that the decision went beyond those questions. It is true, as Danzig contends in her observations submitted to the Court on May 4th, 1925, that the High Commissioner in paragraph 2 of his decision stated that the point in dispute was the interpretation of the first part of Articles 29 and 30 of the Paris Convention, and, as also contended by Danzig, that the interpretation given by him in his decision is binding as between the Parties. This interpretation, however, [26] was given only in regard to certain questions submitted by the Parties and therefore is binding only in so far as the said questions are concerned.

But it is Danzig's further contention that it is both the right and the duty of the High Commissioner, as an official of the League of Nations, under the protection of which the Free City is placed, to examine, on his own initiative and independently of the Parties, the situation both in point of fact and of law, and to decide any dispute, either patent or latent, which may have come to his notice. The true meaning of his decisions should therefore be determined; having regard to these functions of the High Commissioner.

The Court cannot regard this contention as well founded. It has already been stated that the general principle laid down in Article 103, paragraph 2, of the Treaty of Versailles — on which Danzig mainly relies — must be taken in connection with Article 39 of the Paris Convention. From these provisions it is quite clear that the functions of the High Commissioner are of a judicial character and are limited to deciding questions submitted by one or other of the Parties. The High Commissioner, therefore, had no authority to decide questions which the Parties had not submitted to him; and his decision should, if possible, be

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solches ausserhalb des Hafens verlangen kann (Artikel 30 der Konvention).

construed as being in conformity with the powers conferred upon him.

In the present case, however, it is not necessary to apply this principle. The decision of May 25th, 1922, by its very terms, was confined to the questions submitted by the Parties. No reference was made to the Polish postal service being confined within its premises or its use being limited to Polish authorities and offices; letter-boxes and postmen are not mentioned in any part of the decision. The Court does not, however, attach particular importance to this fact; for the exclusion of letter-boxes and postmen might possibly follow from the general exclusion of postal activities outside the building. But the Court is of opinion that a general question concerning the activities of the Polish postal service outside its premises was neither submitted to the High Commissioner nor decided by him.

Of the operative portion of the decision (*dispositif*), which is to be found in paragraph 15, only clauses 1 and 3 call for notice in this connection.

Clause 1 is to the effect that Danzig must provide Poland with the means of establishing a postal service in the vicinity of the port [27] of Danzig, if possible in one building, but in any case in one or more adjacent buildings. This obviously has nothing to do with the question whether the activities of the postal service are to be confined to the interior of the said building or buildings. The Senate of Danzig itself has in a letter to the High Commissioner, dated October 19th, 1922, expressed the opinion that by this part of the decision only the question of the building (*die Gebäude-frage*) had been settled. Clause 3 runs as follows:

"That communication by this postal, telegraphic and telephonic service must go direct by any route selected by Poland or any routes agreed upon between the two Governments of Poland and Danzig under Article 150 of the Convention of October 24th, 1921, from the one place selected in Danzig territory to the one place or places selected in Polish territory, and that no postal, telegraphic or telephonic material or messages can be received or delivered on this route, or these routes, except in the establishment described in 1 above."

In the opinion of the Court this statement clearly refers to point (*d*) of Article 240 of the Warsaw Agreement, that is, to the meaning of the word "directly" (*directement*) in Article 29 of the Paris Convention. It only concerns the question of transit and forbids the acceptance and delivery of postal, telegraphic or telephonic material or messages on the route or routes through the territory of the Free City, except in the postal establishment referred to in clause 1.

It follows from these two clauses that Poland may have only one Post Office and that

no postal matter can be accepted or delivered during the transit through the territory of Danzig or the transport to or from the port. This is not contested by Poland. The question whether the Polish Post Office may extend its activities outside the building and set up letter-boxes and collect or deliver postal matter, as well as the question whether this postal service can be used by the public, are of course quite different questions. It is however to be observed that clause 3 referred to above, although dealing with another point than that which is now before the Court, has an indirect bearing on the latter when [28/4] excluding direct reception in the Polish mail coaches of postal matter deposited in letter-boxes placed either on the station premises or on the trains.

So much for the decision taken as it stands. Danzig, however, contends that the real intention of the High Commissioner in giving his decision was that Poland could have no postal activities outside the building assigned for the purpose. In Danzig's opinion this is clearly shown by the letter of the High-Commissioner dated January 6th, 1923, and also by a *projet d'accord*, which lie submitted to the Parties on April 27th, 1922, before giving his decision. The possible legal effects of the letter of January 6th will be considered further on. For the present it is sufficient to say that any personal opinion which General Haking may have expressed or any proposal he may have made as a mediator cannot alter the meaning and the scope of the decision. Once a decision has been duly given, it is only its contents that are authoritative, whatever may have been the views of its author.

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The decision of December 23rd, 1922, refers to a dispute concerning the right of Poland to establish a letter sorting office (*bureau de triage*) at the main Railway Station of Danzig, and was to the effect that Poland had no such right.

It is conceded on both sides that there is nothing in the operative portion of the decision which deals with the points now in dispute between Poland and Danzig. But in paragraph 6 of the statement of reasons (*motifs*) the High Commissioner says that Article 29 of the Paris Convention gives Poland the right to establish one postal service, which, according to his decision of May 25th, 1922, and the subsequent Agreement between the two Governments, means one Post Office in the port of Danzig; then he goes on to say that in his opinion "this Post Office is not intended to deal with all letters posted in Poland to Polish nationals residing in Danzig, and with all letters sent by these Polish nationals either to Poland or abroad, but that it is intended to enable the Polish authorities, legally established in

Danzig territory, to make up mails and despatch them direct to Poland or abroad from that Post Office, and from nowhere else, and also to deal with through mails sent from [29] Poland via the Port of Danzig to countries beyond the sea and vice versa." On this paragraph Danzig bases her contention that there is a decision to the effect that the use of the Polish postal service is confined to Polish authorities and offices.

An appeal was brought by the Polish Government against the decision of December 23rd, 1922. On April 18th, 1923, an arrangement was made between the Parties on the question decided by the High Commissioner: it is said in the preamble that the representatives of the Parties have agreed "that the decision of the High Commissioner of December 23rd, 1922, is replaced by the following provisions"; clause 3 of the Agreement, however, says that "this practical settlement of the question does not in any way alter the legal position". It does not appear from the documents that the Polish appeal has been expressly withdrawn.

There has been a great deal of discussion between the Parties, and statements have been made as to the meaning and effect of this arrangement. Poland contends that the decision of December 23rd, 1922, has been entirely replaced by the arrangement and is of no effect. On the other hand, it is Danzig's contention that, by virtue of clause 3, only the operative part of the decision has been replaced.

The Court deems it unnecessary to express an opinion on this point. In the very terms of clause 3 of the Agreement, the reservation made by the Parties refers to the "legal situation" (*situation de droit*). The maximum concession which could be made to Danzig's contention in this respect is that the decision itself ought to be considered as being in force, except as concerns Poland's right to have a letter-sorting office at the main Danzig Railway Station, a right which it acquired by the Agreement. If this be so, the decision should be taken as it stands; it is clearly impossible to construe clause 3 of the Agreement as referring to a special part of the decision or as incorporating any particular opinion expressed therein. The Court therefore, whilst abstaining from expressing a definite opinion on the meaning of the clause in question, assumes, for the purpose of argument, that Danzig might invoke, in the present case, the decision of December 23rd, 1922. Now, it is certain that the reasons contained in a decision, at least in so far as they go beyond the scope of the [30] operative part, have no binding force as between the Parties concerned.

It is perfectly true that all the parts of a judgment concerning the points in dispute explain and complete each other and are to be taken into account in order to determine the precise meaning and scope of the operative portion. This is clearly stated in the award of the

Permanent Court of Arbitration of October 14th, 1902, concerning the Pious Funds of the Californias, which has been repeatedly invoked by Danzig. The Court agrees with this statement. But it by no means follows that every reason given in a decision constitutes a decision; and it must be remembered that the Court of Arbitration applied the doctrine of *res judicata* because not only the Parties but also the matter in dispute was the same (*il y a non seulement identité des Parties en litige, mais également identité de la matière*).

Now, although it is not quite clear why the High Commissioner, in paragraph 6 of his decision, expressed his opinion on the scope of the utilization of the Polish postal service, there can be no doubt that the said opinion is irrelevant to the point actually decided by him and therefore has no binding force.

This conclusion, which is drawn from the very nature of judicial decisions, is not affected by Danzig's contention that the decision of the High Commissioner may be considered to be in the nature of a declaratory judgment (*Feststellungsurteil*). In the decision of December 23rd, 1922, as well as in every other decision of the High Commissioner, the operative portion is clearly distinguished from the statement of reasons; the Court is unable to see any ground for extending the binding force attaching to the declaratory judgment on the point decided to reasons which were only intended to explain the declaration contained in the operative portion of this judgment and all the more so if these reasons relate to points of law on which the High Commissioner was not asked to give a decision.

The opinion expressed by General Haking in paragraph 6 of the decision of December 23rd, 1922, is relied upon by Danzig also as an interpretation of the true scope and meaning of the previous decision of May 25th, 1922. In the observations last submitted by Danzig and signed by Professor Verzijl, stress is laid on the fact that General Haking's decisions are logically connected one with the [31] other and are clearly based upon a restrictive conception of the Polish postal service.

This may be so. If General Haking had felt himself constrained to give a decision upon the points now at issue, he very possibly would have settled them in conformity with Danzig's contention. This, however, does not import that these points can be considered as having been decided.

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On January 4th, 1923, the President of the Senate of the Free City made an application to the High Commissioner for a decision upon Poland's claim that her postal

service extended over the whole of the town of Danzig, a claim which the Senate regarded as unjustified. The High Commissioner, on January 6th, transmitted a copy of the application to the Commissioner-General of Poland at Danzig with a covering letter in which he said that, in his opinion, no decision was necessary, as it clearly appeared from the decision already given that Poland had no right to establish a postal service extending outside the building assigned for the purpose.

There is a difference of opinion between the Parties as to whether the decision referred to in the High Commissioner's letter was the decision of May 25th, 1922, as Danzig contends, or the decision of December 23rd, 1922, as contended by Poland.

The Court is of opinion that this point is not material for the present purpose, because the letter in question cannot be regarded as, and by its very terms was not intended to be, a decision. From what has already been said with regard to the judicial functions of the High Commissioner, it follows that he cannot give a decision, within the meaning of Article 39 of the Paris Convention, unless the essentials of a judicial procedure have been complied with. Now, a so-called authentic interpretation of a judicial decision is in effect a new decision; therefore, the Court is unable to recognize that the letter of the High Commissioner of January 6th, 1923, constituted an interpretation of this kind, as understood by Danzig. It merely expressed the personal opinion of General Haking, an opinion which, as the Court has already stated, cannot alter the proper meaning of a decision.

Nor is it possible to agree with Danzig's contention that the Polish Government have accepted the view expressed in the High [32] Commissioner's letter, seeing that they did not object to it. On January 20th, the Commissioner-General of Poland, answering the letter of January 6th, informed the High Commissioner that he considered Danzig's application to be "hasty" (*prématurée*) since the question "had only just begun to be discussed between the postal Administrations of Poland and of Danzig under Article 168 of the Poland-Danzig Agreement of October 24th, 1921". Instead of admitting that the question as to the territorial extent of the Polish postal service had been settled by a previous decision of the High Commissioner, Poland very clearly stated that the question had still to be settled and this, in the first place, by means of negotiations under Article 168 of the Warsaw Agreement.

Danzig contends that the jurisdiction conferred on the High Commissioner by Article 240 of the Warsaw Agreement, does not concern any of the points reserved for negotiation under Article 168. If Danzig's contention was correct, the reply of the Polish Commissioner-

General of January 20th, 1923, would perhaps not have met the real point at issue. However this may be, the two postal Administrations exchanged in the following months letters dealing with the legal basis of the negotiations to be carried on under Article 168 and the Senate of the Free City seems to have taken no steps before December 1924, in order to obtain a decision on the points raised in their letter of January 4th, 1923, nor to have made a statement to the effect that it considered these points as already settled by the letter of the High Commissioner.

For these reasons the Court reaches the conclusion that there is no decision of General Haking in force dealing either with the question whether the Polish postal service is restricted to operations which can be performed within its premises, or with the question whether its use is confined to Polish authorities and offices. It is therefore unnecessary for the Court to consider whether the existence of a final decision could, and if so, under what circumstances, leave room for reconsideration of these points by the High Commissioner or by the Council of the League of Nations.

### III.

The Court, having arrived at the conclusion that the points at issue regarding the Polish postal service in the Port of Danzig have [33] not been settled by any decision in force, has now to deal with the two questions formulated by the Council under No. 2 (a) and (b) of their Request.

In order to answer these questions, it is necessary to state briefly what is the nature and scope of the Polish postal service in the Port of Danzig.

The Treaty of Versailles (Article 104) made provision for a Convention between the Free City of Danzig and Poland which, with a view to giving Poland free access to the sea, was designed to secure to that State, amongst other things, the control and administration of the postal, telegraph and telephone communication between Poland and the Port of Danzig. These rights of Poland were defined by Chapter IV of the Paris Convention in four articles which run as follows:

#### *Article 29.*

"Poland shall have the right to establish in the port of Danzig a post, telegraph and telephone service communicating directly with Poland. Postal and telegraphic

communications via the port of Danzig between Poland and foreign countries, as also communications between Poland and the port of Danzig, shall be dealt with by this service."

*Article 30.*

"The Free City of Danzig undertakes to lease or to sell to Poland on equitable terms the necessary land or buildings for the establishment and working of the services provided for in Article 29 as well as in Article 21. The Free City undertakes to accord to Poland all the facilities necessary for the installation of the telegraph and telephone lines required for the application of the said article."

*Article 31.*

"All other postal, telegraphic and telephonic communications within the territory of the Free City, as also communica[34]tions between the Free City and foreign countries, shall be the concern of the Free City."

*Article 32.*

" Poland and the Free City of Danzig undertake to conclude, within a period of six months from the coming into force of the present Treaty, a special convention for the purpose of establishing uniform postal, telegraphic and telephonic tariffs for communication between the two States; this convention shall at the same time lay down the necessary details for the application of this chapter."

These articles, in conformity with Article 32, were executed and completed by the Warsaw Agreement.

It is convenient at this point to insert a translation of Articles 149, 150 and 151 (No. 1) of this Agreement:

[*Translation*<sup>1</sup>.]

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<sup>1</sup> Translation prepared by the Registry. The original German text is reproduced hereafter:  
Artikel 149.

Der von der Republik Polen gemäss Artikel 29 der Konvention vom 9. November 1920 einzurichtende Post-, Telegraphen- und Fernsprechdienst ist von der Postverwaltung der Freien Stadt Danzig unabhängig.

*Article 149.*

"The postal, telegraphic and telephonic service to be established by the Polish Republic in accordance with Article 29 of the Convention of November 9th, 1920, shall be independent of the Postal Administration of the Free City of Danzig." [35]

*Article 150.*

" It extends:

(a) In the port of Danzig, to all classes and branches of the traffic services and of the technical and administrative services and the installations necessary for such services.

(b) Between the port of Danzig and Poland and between Poland and other countries *via* the port, to all postal, telegraphic and telephonic communications without any restriction to certain traffic routes and with the use of all the usual means of communication."

*Article 151.*

"(1) The Polish Administration shall be entitled independently to decide as to the extent and technical arrangement of such installations."

The remaining articles which deal with postal matters concern in the main the relations between the two postal Administrations, certain privileges and immunities of the Polish service in the Danzig territory, the purchase or lease of sites and buildings necessary for the postal service, the construction or the use in common of telegraph and telephone lines, the tariffs for communications between Danzig and Poland.

The last article of the chapter dealing with this matter (Article 168) runs as follows:

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Artikel 150.

Er erstreckt sich:

- a) im Hafen von Danzig auf alle Zweige und Arten des Betriebs-, des technischen und des Verwaltungsdienstes, sowie auf die dazu notwendigen Einrichtungen;
- b) zwischen dem Hafen von Danzig und Polen und über den Hafen zwischen Polen und dem Auslande auf alle Post-, Telegraphen- und Fernsprechverbindungen ohne Beschränkungen auf bestimmte Verkehrslinien und unter Benutzung aller gebräuchlichen Verkehrsmittel.

Artikel 151.

- (1) Die polnische Verwaltung ist berechtigt, den Umfang und die technische Ausführung der Einrichtungen selbständig zu bestimmen.

[*Translation.*<sup>1</sup>]

"(1) Special arrangements shall be made between the two postal Administrations as soon as possible in regard to the following points: [36/5]

(a) The use of Polish postal and telegraphic installations in the port for the local communications of Polish officials and offices;

(b) The fetching away (*Abholung*) from the Polish post and telegraph offices in the port, by addressees dwelling outside the port, of postal matter and telegrams despatched from Poland;

(c) The distribution (*Bestellung*) to Polish authorities or offices outside the port, of postal matter and telegrams despatched from Poland;

(d) The connection with the Polish telephone exchange, to be established in the port for communication with Poland, of Polish authorities and offices situated in Danzig but outside the port;

(e) Direct service communications between Polish post and telegraph offices in the port and foreign post and telegraph offices;

(f) Permission to establish an unrestricted postal, telegraph and telephone service between the port of Danzig and foreign countries;

(g) Permission to establish a private local postal and telegraph service in the port of Danzig;

(h) Through communication for Poland, via the territory of Danzig, with Poland or other countries;

(i) Through communication with other countries for Danzig via Polish territory;

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<sup>1</sup> Translation prepared by the Registry. The original German text is reproduced hereafter:

Artikel 168.

(1) Über folgende Angelegenheiten sollen zwischen den beiderseitigen Postverwaltungen sobald wie möglich besondere Abmachungen getroffen werden:

- a) Benutzung der polnischen Post- und Telegrapheneinrichtungen im Hafen für den Ortsverkehr polnischer Behörden und Ämter;
  - b) Abholung von Postsendungen und Telegrammen, die in Polen aufgegeben sind, bei den polnischen Post- und Telegraphendienststellen im Hafen durch ausserhalb des Hafens wohnende Empfänger;
  - c) Bstellung von Postsendungen und Telegrammen, die in Polen aufgegeben sind, an polnische Behörden und Ämter ausserhalb des Hafens;
  - d) Anschluss polnischer Behörden und Aemter, die sich in Danzig ausserhalb des Hafens befinden, an die im Hafen einzurichtenden polnischen Fernsprechzentralen für den Verkehr mit Polen;
  - e) unmittelbarer Dienstverkehr der polnischen Post- und Telegraphendienststellen im Hafen mit den Post- und Telegraphendienststellen im Auslande;
  - f) Zulassung des unbeschränkten polnischen Post-, Telegraphen- und Fernsprechverkehrs zwischen dem Hafen von Danzig und dem Auslande;
  - g) Zulassung eines privaten Post- und Telegraphen-Ortsverkehrs im Hafen von Danzig;
  - h) Durchgangsverkehr Polens durch Danziger Gebiet nach Polen Oder dem Auslande;
  - i) Durchgangsverkehr Danzigs durch Polen nach dem Auslande;
  - k) wechselseitiger Verkehr zwischen Polen und Danzig.
- (2) Durch etwaige spätere Abmachungen zu Punkt a, c und d wird der Entscheidung über die staatsrechtliche Stellung der polnischen Behörden und Aemter aud dem Gebiete der Freien Stadt Danzig nicht vorgegriffen.

(k) Reciprocal communication between Poland and Danzig.

(2) Any subsequent arrangements regarding points (a), (c) and (d) shall not affect the decision as to the situation from [37] the standpoint of municipal law, of Polish authorities and offices in the territory of the Free City of Danzig."

It will be seen that there is no trace of any provision confining the operation of the Polish postal authorities to the inside of its postal building. The postal service which Poland is entitled to establish in the port of Danzig must be interpreted in its ordinary sense so as to include the normal functions of a postal service as regards the collection and distribution of postal matter outside the post-office. Indeed, any limitations or restrictions in this respect would be of so exceptional a character that they cannot, in the absence of express reservations, be read into the text of treaty stipulations.

Both sides have put forward arguments as to the exact meaning of the phrase "all classes (*Arten*) and branches (*Zweige*) of the traffic service and of the technical and administrative services and the installations (*Einrichtungen*) necessary for such services" (Article 150 (a) of the Warsaw Agreement). Danzig contends, while Poland denies, that the word "installations" refers to the interior service (*innerhalb des internen Dienstes*). The Court is of the opinion that this point cannot affect the conclusion which it has arrived at. The article in question begins with these words: "It (i.e. the service) extends . . . to", etc. (*Er erstreckt sich*). This article read in connection with the preceding and subsequent articles should be interpreted in the sense of including the things enumerated therein, and not in the sense of excluding the postal service from exercising its normal functions in collecting and delivering postal matter outside the postal building.

By the terms of Article 29 of the Paris Convention, Poland is entitled to establish in the port of Danzig postal, telegraph and telephone communications between Poland and other countries *via* the port of Danzig, and between Poland and the port of Danzig. There is nothing in the texts of the international agreements which suggests any limitation of the use of the postal service to Polish authorities and offices. As will be explained hereafter, the expression "port of Danzig" was understood by the contracting Parties to be a territorial conception. It is perfectly clear that the right which Poland has under the terms of the international agreements is a right to communications with the port of Danzig, in its territorial sense. What are the exact limits of the port is a question with which the [38] Court is not concerned. But it does not in the least follow that because it may perhaps be difficult to determine the exact territorial limits of the port, Poland's right in this respect should be limited to communications

with the Polish authorities and offices in Danzig territory.

In the absence of special provision to the contrary, the post, telegraph and telephone communication must be taken to be intended for the use of the public in the ordinary way.

Article 168, No. 1, of the Warsaw Agreement contains certain stipulations from which it may be inferred that distribution of postal matter outside the post office and especially the use of the service by the public are not excluded. This article prescribes that the postal administrations of the two Parties are to conclude, as soon as possible, special arrangements concerning certain matters enumerated therein. Among these are:

"(b) The fetching away (*Abholung*) from the Polish post and telegraph offices in the port, by addressees dwelling outside the port, of postal matter and telegrams despatched from Poland;

"(c) The distribution (*Bestellung*) to Polish authorities or offices outside the port of postal matter and telegrams despatched from Poland."

The provision under (c) shows that it is within the competence of the Polish postal service to establish a distribution service within the limits of the port. If in the said provision the distribution to Polish authorities outside the port has been contemplated, whilst nothing is said as regards distribution to such authorities within the port, it seems quite clear that in the view of the Parties the right to establish a distribution service within the limits of the port is within the competence of the Polish postal service.

The difference in the wording of (b) and (c) further shows that the word "addressees" in (b) refers to the public in general, and not merely to Polish authorities and offices, as in (c). It was evidently contemplated that a special privilege should be extended to Polish authorities and offices, outside the port, in that letters and telegrams addressed to them could be delivered at their addresses, while private addressees living outside the port had to call at the post office for their letters and telegrams. [39]

The legal effect of Article 168 has been disputed by the Parties. Poland claims that the article constitutes a *pactum de contrahendo*, which lays down certain principles already agreed upon by the Parties and which imposes upon Danzig an obligation to complete the necessary arrangements for carrying these principles into effect. Danzig, on the other hand, denies that there is any such obligation, and contends that the list contained in the article is only a programme for negotiations which either Party is free to enter into or not as she pleases. The Court is not called upon to express an opinion on this question. The important

point in this connection is that a comparison of (b) and (c) of the article shows that the utilization by the public of the service to and from the port was contemplated by the Parties.

It should be remarked that the postal rights granted to Poland are, by the terms of the agreements, limited to the port of Danzig, and that she is not entitled, in the absence of special arrangements, to perform any postal operation outside the limits of the port. The mere fact that under Article 168, No. 1 (b), the Parties had in view the conclusion of special arrangements for private persons as well as for Polish authorities and offices outside the limits of the port shows that, failing such arrangements, the field of activity of the service is confined to the limits of the port, and that the service is only intended for the use of the public in the port. In actual practice it is, of course, hardly possible to prevent the public outside the port from making use of the service, but in the matter of distribution outside the post office and delivery within it, an effective control can be exercised.

It has been urged on behalf of Danzig that Poland's postal rights in Danzig constitute a grant in derogation of the postal monopoly of Danzig, and that the grant must be strictly construed in favour of Danzig. In the opinion of the Court, the rules as to a strict or liberal construction of treaty stipulations can be applied only in cases where ordinary methods of interpretation have failed. It is a cardinal principle of interpretation that words must be interpreted in the sense which they would normally have in their context, unless such interpretation would lead to something unreasonable or absurd. In the present case, the construction which the Court has placed on the various treaty stipulations is not only reasonable, but is also supported by reference to the various [40] articles taken by themselves and in their relation one to another.

It has also been urged that recognition of Poland's claims would result in a serious loss to the revenue of the Free City of Danzig. It cannot be doubted that the institution of a Polish postal service in the port of Danzig would mean a loss to the Danzig postal monopoly, but this consideration cannot affect the treaty rights to which, in the opinion of the Court, Poland is entitled.

The Court wishes to point out that nothing in the present opinion can be construed as prejudging the way in which, from the point of view of private rights and municipal administration, Poland's postal rights in Danzig may be exercised.

Since the Court is of opinion that the port in the postal sense is not a personal entity

comprising certain authorities and offices or categories of persons, as contended by Danzig, and that the Polish postal service is not limited to operations inside the building in the Heveliusplatz, it is essential to indicate why the Court considers the port of Danzig as a territorial area.

Besides the fact that the expression "the port of Danzig" conveys, as ordinarily used, the notion of a territorial and topographical entity, both the Paris Convention and the Warsaw Agreement use in several instances the expression: *dans le Port (im Hafen von Danzig)*, and particularly in Article 168 of the above-mentioned Agreement there is a specific mention of arrangements to be concluded concerning the relations between Polish post, telegraph or telephone offices in the port with addressees or Polish authorities and offices outside the port ([b] and [c]) or with "Polish authorities and offices which are in Danzig outside the Port" (168 [d]).

These distinctions prove, whatever interpretation may be put upon Article 168 as a whole, that in the opinion held by the contracting Parties in 1921 the port of Danzig is regarded as a territorial area lying within the territory of the Free City. This conclusion is confirmed by the wording of certain other provisions of the Warsaw Agreement, e. g. its Article 240.

The correspondence emanating from Poland and subsequent to 1921 shows that she has never abandoned this point of view. [41]

As concerns the attitude of Danzig, the fact that, at a given moment, the Free City did not, like Poland, insist on the delimitation of the area of the port, finds its explanation in the interpretation given by General Haking limiting the Polish postal service to operations in the interior of the building attributed to it and its use to Polish authorities and officials. The Court, however, has discarded this interpretation.

The limits of the port, considered as the area of the Polish postal service, have not been fixed, as has been explained above.

The Court is not asked to define and delimit the port of Danzig; but it considers it necessary to point out that, in its opinion, the practical application of its answers depends on the question of the limits of the port of Danzig within the meaning of the Treaty stipulations.

FOR THESE REASONS,

The Court is of opinion:

(1) that there is not in force any decision of General Haking which decides in the manner stated in paragraph 18 of the present High Commissioner's decision of February 2nd, 1925, or otherwise, the points at issue regarding the Polish postal service;

(2) that, within the port of Danzig:

(a) the Polish postal service is entitled to set up letter-boxes and collect and deliver postal matter outside its premises in the Heveliusplatz, and is not restricted to operations which can be performed entirely within those premises;

(b) the use of the said service is open to the public and is not confined to Polish authorities and officials.

Done in French and English, the English text being authoritative, at the Peace Palace, The Hague, this sixteenth day of May, nineteen hundred and twenty-five, in two copies, one of which is to be deposited in the archives of the Court, and the other to be forwarded to the Council of the League of Nations.

(Signed) Max Huber,  
President.

(Signed) Å. Hammarskjöld,  
Registrar.

[42] Annex.

*Documents transmitted by the Secretary-General of the League of Nations in accordance with the Council's Resolution of March 13th, 1925.*

1. — Print of the Treaty between Poland and the Free City of Danzig, concluded at Paris on November 9th, 1920.
2. — Print of the Agreement between Poland and the Free City of Danzig, signed at Warsaw on October 24th, 1921.
3. — *Document C. 71.* 1925. Note by the Secretary-General communicating to the Council the High Commissioner's decision of February 2nd, 1925.
4. — *Document C. 90.* 1925. Note by the Secretary-General communicating to the Council the appeal of Poland against the High Commissioner's decision of February 2nd, 1925.
5. — *Document C. 90 (a).* 1925. Note by the Secretary-General communicating to the Council eleven annexes to the above appeal by the Polish Government.
6. — *Document C. 157.* 1925. Note by the Secretary-General communicating to the Council observations by the President of the Senate of Danzig upon the above appeal of Poland.
7. — *Document C. 176.* 1925. Note by the Secretary-General communicating to the Council observations of the Polish Delegation upon the observations by Danzig contained in document C. 157. (No. 6 above.)
8. — *Document C. 190.* 1925. Note by the Secretary-General communicating to the Council a reply by Danzig to the observations by Poland contained in document C. 176. 1925 (No. 7 above).
9. — *Document C. 177.* 1925. Report presented to the Council by M. Quinones de Leon.
10. — *Document C. 191.* 1925. Note by the Secretary-General communicating to the Council observations by Danzig upon the above report by M. Quinones de Leon.
11. — Copy of the decision of the High Commissioner (General Haking), dated May 25th, 1922.
12. — *Official Journal of the League of Nations*, 3rd year, No. 10, October 1922, containing (pp. 1103 & 1104):
  - a) the conclusions of the above-mentioned decision of May 25th, 1922;
  - b) an interpretation of that decision given by the High Commissioner on August

30th, 1922, and the record of the consequent withdrawal of the appeal by Poland against that decision.

13. — Copy of the decision of the High Commissioner (General Haking) dated December 23rd, 1922.
14. — Minutes of the 24th Session of the Council of the League of Nations (*Official Journal*, 4th year, No. 6, June 1923) recording (Minute 913) the confirmation by the Council of an Agreement dated April 18th, 1923, replacing the High Commissioner's decision of December 23rd, 1922, and giving (Annex 492) the text of the Agreement.
15. — *Official Journal of the League of Nations*, 2nd year, No. 9, November 1921, containing:
  - a) Decision by High Commissioner (General Haking) dated August 15th, (p. 971);
  - b) Agreement between Poland and Danzig, dated September 23rd, 1921, not to appeal against the decision of August 15th, 1921 (p. 978).
16. — *Official Journal of the League of Nations*, 3rd year, No. 5, May 1922, containing on page 428 a correction of the French translation of the decision of August 15th, 1921, as printed in the *Official Journal* for November 1921.
17. — Copies of letter from General Haking to the Commissioner-General of the Polish Republic at Danzig, dated January 6th, 1923, and of the letter therein referred to addressed to General Haking by the [43] President of the Senate of the Free City of Danzig on January 4th, 1923.
18. — *Official Journal of the League of Nations*, 5th year, No. 11. Part 2, November 1924, containing (p. 1708) an agreement between Poland and Danzig, dated August 29th, 1924, concerning the Polish postal sorting office for oversea parcels in the Danzig Harbour.
19. — Decisions of the High Commissioner (League of Nations), 1921, 1922, 1923 and 1924. Four volumes in English and German, published by the Free City of Danzig.
20. — *Zbior Dokumentow urzedowych dotyczacych stosunku Wolnego Miasta Gdanska do Rzeczypospolitej Polskiej*. Vol. I, 1918-1920; Vol. II, 1921-1923. Two volumes published by the Commissioner-General of the Polish Republic at Danzig.
21. — Dossier containing copies of the annexes to the High Commissioner's (Mr. MacDonnell) decision of February 2nd, 1925, with schedule of annexes (in the original languages as communicated to the Secretariat by the High Commissioner).

Schedule of papers accompanying copy of High Commissioner's decision dated February 2nd, 1925, concerning the extension of the Polish postal service in Danzig, to Secretary-General. (Exclusive of Annexes I to IV mentioned in paragraph 4 of decision).

No.	Date.	From	To
1.	January 6th, 1925	Senate	High Commissioner
2.	„ 13th, „	„	„
3.	„ 21st, „	P.G.G.	„

22. — Copy of a memorandum No. P. A. 11. 124/25, dated February 3rd, 1925, addressed to the High Commissioner (Mr. MacDonnell) by Danzig, as communicated to the Secretariat by the President of the Senate of the Free City of Danzig.
23. — Minutes of the meeting of the Council of the League of Nations held in the afternoon of March 13th, 1925.
24. — Letter from the President of the Senate of the Free City of Danzig to the High Commissioner, December 1st, 1924.
25. — Letter from the President of the Senate of the Free City to the Polish Commissioner-General in Danzig, December 1st, 1924.
26. — Letter from the Polish Commissioner-General in Danzig to the President of the Senate of the Free City, January 3rd, 1925.

*Documents forwarded by the Secretary-General at the request of the Court.*

27. — Minutes of meeting between the representative of the Polish Republic and the President of the Senate of the Free City, which took place at the offices of the Secretariat of the League of Nations on April 18th, 1923.
28. — Report by the High Commissioner, Danzig, to the Council of the League of Nations, dated February 17th, 1925. (C. 19. 1925. 1.)
29. — Note by the Secretary-General communicating to the Council copy of a letter dated February 7th, 1925, from the President of the Council to the High Commissioner of the League of Nations at Danzig, with reference to the latter's report to the Council (mentioned under No. 28 above) regarding certain aspects of the question of the Polish postal service in Danzig. (C. 80. 1925.)
30. — Note by the Secretary-General communicating to the Council copy of a letter dated

February 14th, 1925, from the High Commissioner of the League of Nations at Danzig, requesting that certain remarks on paragraph 1 of the Polish note on his report of January 17th, and contained in the above-mentioned letter, may be laid before the Council of the League of Nations. (C. 78. 1925.) [44]

31. — Registry files of the Secretariat of the League of Nations relating to the High Commissioner's decisions of August 15th, 1921, September 5th, 1921, December 6th, 1921, December 3rd, 1922, February 23rd, 1924.
32. — Registry files of the Secretariat of the League of Nations relating to the appeals by Poland against the High Commissioner's decisions of May 25th, 1922, and December 23rd, 1922.
33. — Preliminary Danzig-Polish Agreements of February 1st, 1923.
34. — Amendment to Minutes of the Council of the League of Nations, held on March 13th, 1925.
35. — Secretariat, file of the League of Nations relating to the coming into force of the Danzig-Polish Agreement of October 24th, 1921.
36. — Memorandum by the Senate of Danzig addressed to the High Commissioner, dated February 14th, 1925. (C. 186. 1925. 1.)
37. — Letter from the High Commissioner to the Senate of Danzig, April 12th, 1922.
38. — *a)* Letter from the High Commissioner to the Senate of Danzig and the Polish Commissioner-General, March 8th, 1922.  
*b)* Letter from the Senate to the High Commissioner, April 6th, 1922.  
*c)* Letter from the High Commissioner to the Polish Commissioner-General, April 12th, 1922.
39. — Registry file of the League of Nations containing the appeal of Poland against the High Commissioner's decision of February 2nd, 1925, with annexes.

*Documents (other than Memoranda and Legal Opinions) presented by the interested Governments.*

40. — Annexes to the Polish Memorandum:

*Annex 1:* Grundsätze für die Polnisch-Dantziger Abmachung aus den Artikel 29 bis 32 der Pariser Konvention.

*Annex 2:* Stellungnahme der Sachverständigen-Mitglieder der Polnischen Postkommission zum Gutachten der Sachverständigen-Mitglieder der Danziger

Postkommission vom 18. April 1921.

*Annex 3:* Protokoll über die Ergebnisse der Verhandlungen der Postkommission am 13. Mai 1921.

*Annex 4:* Protokoll über die Konferenz der beiden Vorsitzenden der Polnisch Danziger Postkommission vom 11. Juli 1921.

*Annex 5:* Letter to Senator Dr. Paul Eschert, in Danzig (July 12th, 1921).

*Annex 6:* Schluss-Protokoll (August 18th, 1921).

*Annex 7:* Letter from General Haking (March 8th, 1922).

*Annex 8:* Note from the Polish Postal Administration of the Free City to the Polish postal authorities in Danzig (September 26th, 1922, forwarding:

Gegenäusserung zu den zu Artikel 168 des Wirtschaftsabkommens geäusserten polnischen Ansichten betr. die Punkte A-G (2. Juni 1922).

*Annex 9:* Stellungnahme der polnischen Post- und Telegraphenverwaltung zur Aeusserung der Post- und Telegraphenverwaltung der Freien Stadt Danzig vom 2. Juni 1922 (6. Oktober 1922).

*Annex 10:* Note from the Polish Postal Administration of the Free City to the Polish postal authorities in Danzig (November 21st, 1922).

*Annex 11:* Letter from the President of the Senate of Danzig to the High Commissioner (October 19th, 1922).

*Annex 12:* Letter addressed to the President of the Senate of the Free City (November 20th, 1922).

*Annex 13:* Note from the Postal and Telegraphic Administration of the Free City to the Polish postal authorities in Danzig (December 29th, 1922).

*Annex 14:* Note from the Polish postal authorities to the Postal and Telegraphic Administration of the Free City (January 10th, 1923). [45]

41. — Annexes to the Memorandum of the Free City of Danzig:

*Annex I:* English text of the High Commissioner's decision of February 2nd, 1925.

*Annex II:* Erklärung des Präsidenten des Senats der Freien Stadt über die am 18. April 1923 in Genf abgeschlossene Vereinbarung, betreffend Entscheidung des Hohen Kommissars vom 23. Dezember 1922.

42. — Originals of three successive drafts for the Agreement of April 18th, 1923.

43. — Annex to complementary Memorandum by Senate of the Free City of Danzig: Meeting on April 27th, 1922, regarding the direct Polish postal service between the

port of Danzig and the territory of Poland (*Projet d'accord*).

44. — Annex to complementary Polish Memorandum:

Declaration by M. Leon Plucinski (See 3:11).

45. — Complementary declaration by President Sahm (See 3:11).